3 (1)

SINGLE BENCH

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION No. 4829/2005

PETITIONER : Dayaram Lahrey S/o. Shri Tegnuram Lahrey, Age about- 46 years, Panchayat Karmi Cum-Secretar/y, Gram Panchayat Bataupali "A", Block/ Tahsil-Sarangarh, District- Raigarh (C.G.).

4729/05 K.N.Wande 15/9/05

VERSUS

RESPONDENTS : 1. State of Chhattisgarh, Through : Secretary, Panchayat and Social Service Department, D.K.S. Bhawan, Mantralaya, Raipur (C.G.)

2. Collector Raigarh, District- Raigarh (C.G.).

3. Deputy Director, Panchayat and Social Welfare, Raigarh, District-Raigarh (C.G.).

4. Chief Executive Officer, Janpad Panchayat, Sarangarh, Tahsil-Sarangarh, District- Raigarh (C.G.)

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WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 4829 of 2005

Petitioner : Dayaram Lahrey

Versus

Respondents : State of Chhattisgarh & others

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri K. N. Nande, counsel for the Petitioner.

Shri Ajay Dwivedi, Panel lawyer for the respondents No. 1, 2 and 3.

Shri Sandeep Dubey, counsel for the respondent No. 4.

ORDER

(12th September, 2006)

1. The petitioner was appointed as Panchayat Karmi/Secretary in the Gram Panchayat - Bataupali "A", Block- Sarangarh, District- Raigarh.

2. The petitioner has filed this petition impugning the order dated 29.8.2005 (Annexure P/1) passed by the Deputy Director, Panchayat and Social Welfare, Raigarh, whereby the notification issued under Section 69(1) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993, declaring the petitioner-Panchayat Karmi also to act as Secretary of the Panchayat has been cancelled. Consequently vide order dated 30.8.2005 (Annexure P/2), issued by the Chief Executive Officer, Janpad Panchayat, Sarangarh, the charge of the Secretary of the Gram Panchayat - Bataupali "A", Block- Sarangarh, District- Raigarh, from the petitioner has been withdrawn.

3. A Division Bench of this Court in Writ Petition No. 1656 of 2004 (Rooplal Nayak Vs. The State of Chhattisgarh & others) has held that

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removal of a Secretary from the post of Gram Panchayat, initially appointed as Panchayat Karmi would be governed by the provisions of Madhya Pradesh Panchayat Service (Discipline and Appeal) Rules, 1999 (for short 'The Rules, 1999'). Withdrawal of charge of the post of Secretary from the petitioner, being Panchayat Karmi, tantamounts to reduction in rank and since 'reduction in rank is a major penalty in terms of Rule 5 (b) (iv) of the Rules, 1999, it cannot be imposed without conducting a regular departmental enquiry as envisaged under Rule 7 of the Rules, 1999.

4. It is admitted case that no enquiry was conducted before passing the impugned order dated 29.8.2005 (Annexure P/1). The impugned action of the respondents tantamounts to removal which is a major penalty and the same cannot be imposed without conducting a regular enquiry.

5. For the aforesaid reasons, this petition is allowed and the impugned order dated 29.8.2005 (Annexure P/1) is quashed. Consequently, the petitioner is entitled to all the benefits, pecuniary and otherwise.

6. It is made clear that this order will not come in the way of the Respondent/Gram Panchayat or any other respondent, as the case may be, from initiating the disciplinary action against the petitioner, if so advised, in accordance with law and in terms of the procedure prescribed in Rule 7 of the Rules, 1999.

7. In the facts and circumstances of the case the parties shall bear their own costs.

Sd/-
Satish K. Agnihotri
Judge